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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.1.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

T.C.(Appeal)Nos.88 and 89 of 2002

Sarojini Ramaswami ...Appellant in both appeals.

-vs-

The Assistant Commissioner of Income tax
City Circle – I (2)
Chennai 34 ...Respondent in both appeals.

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961. against the order of Income Tax Appellate Tribunal "C" Bench dated 27.11.2001 in ITA.No.1124/MDS/99 and ITA No.1208/MDS/1999.

For Appellant : Mr.C.V.Rajan for
Mr.Subramaniya Aiyar

For Respondent : Mr.T.Ravi kumar, Jr Standing Counsel for Income Tax

JUDGMENT

(The judgment of the Court was delivered by CHITRA VENKATARAMAN,J)

The appeals are by the assessee. At the time of admission, following questions of law were raised:-

1. Whether the Tribunal is right in holding that the whole income derived from the sale of the property subject to capital gains only in the hands of the appellant?

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2.Whether the Tribunal is right in disregarding the claim of other four co-owners and filing of the return by them in respect of respective shares in the property and assessed to capital gains the same income in their respective hands by the Department?

3. Whether the Tribunal is right in ignoring the documentary evidence of fixing the ceiling as for the family under Section 5(1)(ii)(A)(C) Urban Ceiling Act, 1978, wherein it was clearly established that property belong to the family?

4. Whether the Tribunal is right in rejecting the claim of the relief under Section 54 F of the Act.?

5. Whether the Tribunal is right in rejecting the valuation shown by the appellant which is based on valuation report by an Expert, a qualified and approved valuer, when there is no specific reference to the valuation officer by the assessing officer under Section 55 A of the Income Tax Act for the purpose of ascertaining the fair market value as on 1.4.1981?

6. Whether the Tribunal is right in rejecting the claim of expenditure in connection with the transfer of property?

2. T.C.No.88 of 2002 is against the order of the Tribunal in ITA.No. 1124/Mds/1999 filed by the assessee in respect of assessment year 1996-97.

3. T.C.No.89 of 2002 is against the order of the Tribunal in ITA.No. 1208/Mds/1999 filed by the Assistant Commissioner of Income Tax in respect of assessment year 1996-97.

4. The assessee sold 52 cents of land in Survey No.213/1 at Mugappair Village for Rs.1,33,00,000/- and another land measuring 2400 sq.ft. at Madurai for Rs.1,14,000/-. The issue in the appeal relates to capital gains tax of the Mugappair property. The assessee claimed a sum of Rs.1,00,000/- as expenses on stamp duties and showed the net sale proceeds at Rs.1,32,00,000/-. She claimed herself to be the owner of undivided 1/5th share. After claiming relief under Section 54F, the capital gains was worked at

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Rs.92,000/-. In support of her claim that she was the owner of undivided 1/5th share, she relied on a purchase deed reciting the appellant's name and the ownership of the property. Referring to the application made to the Urban Land (Ceiling and Regulation) Authority, and other materials available, the Commissioner came to the conclusion that the assessee was the sole owner of the property. Consequently, entire sale proceeds merited to be considered in her name to work out the capital gains on that basis.

5. Countering the claim of the assessee that the value of the property was at Rs.3,65,000/- as per the valuation report produced by her, the Assessing Authority noted that the adjoining lands were acquired by the Housing Board for prices in the range of Rs.25,000 to 30,000 per ground. Consequently, he rejected the valuation report as baseless. He also noted that even at the time of purchase in 1970 it was intended as market site forming part of a large area developed by the seller as noted in the purchase deed. Consequently, the cost was worked at Rs.75,000/- per ground as on 1.4.1981 and a sum of Rs.3,00,000/- was deducted towards improvement.

6. Referring to relief under Section 54 F of the Act, the Assessing Officer noted that the property was purchased by means of two separate purchase deeds, as such, the assessee would be entitled to 50% rights over the property. Consequently, relief under Section 54F can be given only to the extent of the property as per the document in the name of the assessee.

7. On the question of additional stamp duty, the Assistant Commissioner of Income Tax noted that the expenses incurred in connection with the sale of the property was Rs.50,000/-. The additional stamp duty alleged to have been paid was not evidenced by any material. Consequently, the cost was proportionately reduced to Rs.7,15,570/- and on that basis, a sum of Rs.96,98,890/- was subjected to tax under capital gains. The Officer also took cost of acquisition at Rs.7,09,000 and indexed the net capital gain at Rs.28,35,540/-.

8. Aggrieved of this, the assessee went on appeal. The Commissioner of Income Tax (Appeals), held that there was no supporting evidence on the question of joint ownership. The Commissioner of Income Tax (Appeals) however granted relief on the cost of improvement at Rs.5,00,000/-. He also accepted the value of the property at Rs.1,00,000/- per ground. Considering value of the property at T.Nagar, Adyar, Mylapore, etc. and comparing the same with the subject property, the Commissioner upheld the view of the Assessing officer and fixed the same at Rs.50,000/-.

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9. On the question of deduction under Section 54F of the Act, he confirmed the order of the Assessing Officer to the extent that there was nothing to show the assessee, could be treated as co-owner of the property. Consequently, the interest earned on the bank account in entirety was included.

10. The assessee went on appeal before the Tribunal questioning the correctness of the order treating the assesee as owner of the entire extent of the property as against the claim of undivided share. The assessee also questioned the rejection on the deduction of expenses incurred in connection with the sale of the property, indexed cost of acquisition and also relating to deduction under Section 54F to the extent of Rs.50,000/- only. The Department had also filed an appeal as regards the cost of improvement at Rs.5,00,000/- as against the Assessing Officer fixing at Rs.3,00,000/-. Apart from that, they also questioned the cost of land could be taken as Rs.1,00,000/- as against Rs.75,000/- per ground adopted by the Assessing Officer.

11. By order dated 27.11.2001, the Tribunal rejected the appeal filed by the assessee and allowed the appeal filed by the Department partly.

12. On the question of assessee claiming to be the owner of 1/5th undivided share in the property, the Tribunal held that the evidence that are on record clearly disproved the claim of the assessee. Consequently, the Tribunal confirmed that the assessee was sole owner of the property from the time she purchased it as a single owner till the time she sold it as single owner once again. Consequently, the entire income from the capital gain was to be assessed at the hand of the assessee only.

13. On the question of expenses incurred in connection with the sale proceeds, the Tribunal found that the assessee had not let in any evidence to substantiate her contention as well as to counter the conclusion by the authorities below are unjustified. Consequently, the Tribunal rejected this question also.

14. On the question of cost of acquisition as on 1.4.1981, the Tribunal noted that the Commissioner of Income Tax took into consideration the lands which are located in Luz Church Road and Warren Road in Mylapore as well as in T.Nagar and Adyar, had no relevance whatsoever. The Tribunal found that the comparison cases referred to by the Commissioner of Income Tax were no where near the property at Mugappair and they are situated in far off places. The Tribunal further noted that these lands situated in Mugappair is close to Anna Nagar. Hence, the sale expenses referred to for the purpose of comparison were not at all justified in the circumstances.

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15. Referring to the reliance on the valuation report, the Tribunal held that the valuer's report was totally unimaginable. The Tribunal also pointed out that there was no ready material available and the guideline value was also not on record. The Tribunal noted that except for referring to the order of the Assessing officer, the Department had not placed any material to interfere with the order of the Commissioner of Income Tax on the point of determining the cost of the property as on 1.4.1981. In the circumstances, the Tribunal rejected the plea of the Department on the valuation adopted.

16. As regards the issue on the expenses incurred and allowed by the Commissioner of Income Tax Appeal at Rs.5,00,000/- for the improvement, the Tribunal noted that there was no evidence adduced as regards the expenses actually incurred by the assessee. Consequently, the order of the Commissioner of Income Tax Appeals allowing the cost of improvement at Rs.5,00,000/- was rejected and upheld the contention of the Department that the cost of improvement at Rs.3,00,000/- be allowed in this case.

17. The Tribunal further noted that the assessee had not let in evidence to show that any further additional stamp duty was incurred. The Tribunal further noted that the assessee had not submitted any evidence as regards the additional stamp duty paid. In the circumstances, the claim was rejected. Thus, the Tribunal dismissed the appeal of the assessee and allowed the appeal of the Department only on the question of cost of improvement by restoring the order of the Assessing Officer. Aggrieved of this, the assessee has come on appeal.

18. The learned counsel appearing for the assessee submitted that the Tribunal erred in rejecting the contention as regards the joint ownership as well as on the question of valuation. He submitted that the tribunal erred in ignoring the valuer's report.

19. We do not agree with the submissions. The Tribunal, as a final fact finding authority, has rightly affirmed the findings of the authorities below that no documents were furnished by the assessee or any evidence given to substantiate that she was the owner of the undivided 1/5th share alone. As rightly pointed out by the Tribunal, the documents available showed the assessee/ appellant herein was the absolute owner right from the day of the purchase to the date of sale. In the circumstances, it being afinding of fact we reject the plea .

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20. On the question of additional expenses incurred, in connection with the sale, the Tribunal has found that the assessee had not let in any evidence before the authorities below nor had shown before us, how the finding by the Tribunal was erroneous. In the absence of any evidence to substantiate the claim that the assessee had spent further on registration by way of stamp duty, or the expenses incurred in connection with the same, we do not find any merit in this contention.

21. On the question of cost of improvement, a perusal of the order of the Commissioner shows that the relief had been granted to the assessee accepting the claim for improvement cost at Rs.5,00,000/- without any material. Except to state that Mugapair area was actually low lying area leading to waterlogging and that the assessee had put up construction to the compound wall, the Commissioner granted the claim of the assessee absolutely unsupported by any material on record to support the claim that the assessee had incurred Rs.5,00,000/- towards cost of improvement at Rs.5,00,000/-. Rightly, the Tribunal rejected the plea of the assessee and allowed the appeal filed by the Department, that in the absence of any material, cost of improvement be restricted to Rs.3,00,000/- only.

22. Although the assessee had raised 12 questions of law, yet going by the very questions based on the findings of the fact by the ultimate fact finding authority, we do not find any merit in the appeal. Consequently, the appeal fails and the same is dismissed. No costs .

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai-90

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2.The Income Tax Appellate Tribunal
"C" Bench Madras.

3.The Commissioner of Income-Tax (Appeals),II Madras .34.

4.The Assistant Commissioner of
Income-tax, City Circle I (2),
Chennai 34.

+ 2 ccs to Mr. N. Muthukumar, Advocate SR Nos.4096, 4095

+ 1 cc to Mr. C. V. Rajan, Advocate SR No. 3908

T.C.(Appeal) Nos.88 and 89 of 2002

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